

Deficiency Progress Report – Update 1

Report Submitted: July 9, 2008

CUPA: Stanislaus County Environmental Resources

Evaluation Date: April 9 and 10, 2008

Evaluation Team:

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Corrected Deficiencies: 3, 9, 10, 11

Next Progress Report (Update 2) Due: October 7, 2008

Please update the deficiencies below that remain outstanding.

- 1. Deficiency:** The CUPA did not correctly report information in its Annual Inspection Summary Report (Report 3) and Annual Enforcement Summary Report (Report 4) for fiscal years (FYs) 04/05 through 06/07. The information for the “Number of Routine Inspections the Return To Compliance (RTC) within Established Standard” in Report 3 and the “Number of Facilities with Violation Type” in Report 4 was either not reported correctly or was not reported.

Preliminary Corrective Actions: By July 10, 2008, correct the RTC information in Report 3 and the facilities with violation information in Report 4 for FYs 04/05 through 06/07.

Submit the corrected Report 3s and Report 4s for FYs 04/05 through 06/07 to Cal/EPA along with the CUPA’s first progress report.

CUPA’s 1st Update (7-9-08): Stanislaus County CUPA is submitting the corrected Report 3 and 4s as an attachment to this update.

Cal/EPA’s 1st Response: There continues to be inconsistencies in the revised Annual Summary Reports 3 and 4 for FY 04/05 through 06/07 submitted by the CUPA. Cal/EPA has emailed the summary reports back with comments. Please analyze the report data to verify its accuracy. The submission of the corrected Annual Summary Reports will correct this deficiency.

CUPA's 2nd Update: Enter update here

2. **Deficiency:** The CUPA has not inspected every stationary source subject to the CalARP program within the past three years.

Preliminary Corrective Actions: By April 10, 2009, the CUPA will inspect at least 1/3 (approximately 20) of its stationary sources subject to the CalARP Program.

By July 10, 2008, the CUPA will submit an action plan, including resource allocation, and/or proposed increase in staffing required to establish and maintain the mandated inspection frequency.

CUPA's 1st Update (7-9-08): Stanislaus County CUPA is submitting, as part of this progress report, the schedule for RMP Inspections through 2008. At this time, 24 facilities (approximately 1/3 of the total number of RMP facilities) have been scheduled through the remainder of the year. This number will exceed the number set forth in the CUPA audit and will complete the inspections prior to the April 10, 2009 deadline.

Since March 4, 2008, the CUPA has completed inspections on 7 facilities. The CUPA will continue to inspect its RMP facilities in order to ensure that every RMP facility is inspected every three years.

Cal/EPA's 1st Response: Please refer to OES's response.

- **OES's response:** The CUPA's action plan looks good, and the CUPA has made an excellent start on the implementation of this plan. With the next quarterly update, please indicate how many stationary sources, in total, have been inspected since the evaluation.

CUPA's 2nd Update: Enter update here

3. **Deficiency:** The CUPA's "Information Request Process" procedure does not specify that precise locations of hazardous materials and site maps shall not be made available for public inspection.

Additionally, the CUPA's "Information Request Process" procedure incorrectly states that trade secret information will not be released by the Department to the public without notifying the business of the request and receiving written approval from the business. Upon notification by the Department of the request, the business has 30 days to seek a declaratory judgment or an injunction preventing the release of the information. In the absence of these court filings, the Department must

release the information to the public 30 days after the mailing date of the written notification. Written approval from the business is not required.

Preliminary Corrective Actions: By July 10, 2008, the CUPA will submit a draft (or, if possible, a final and approved) Information Request Process procedure that accurately reflects the requirements of HSC Sections 25506, 25511, and, for CalARP, Section 25538 and CCR, Title 19, Section 2775.5, with respect to what information must be withheld from public inspection.

CUPA's 1st Update (7-9-08): The CUPA has amended the *Information Request Process* to accurately reflect the HSC sections outlined in the CUPA Evaluation. The CUPA corrected the procedure outlined regarding trade secret information and specifically stated hazardous materials locations and maps would not be made available to the public. A copy of the Information Request Process is included as part of this progress report.

Cal/EPA's 1st Response: Cal/EPA considers this deficiency corrected. Please refer to OES's response.

- **OES's response:** The procedure supplied with the update satisfies all of the elements of HSC 25506, 25511 and 25538, and 19 CCR 2775.5. The deficiency has been corrected.

- 4. Deficiency:** The CUPA is not ensuring that UST facility information submitted is correct. The CUPA uses the UPCF forms for gathering required information, however, many of the completed forms reviewed had erroneous information regarding the tanks, piping, and monitoring. While the owner/operator may not know the correct information, the CUPA should review the information and ensure that it is correct.

Preliminary Corrective Actions: Prior to conducting the annual inspection, the CUPA shall review all paperwork submitted for a Permit to Operate and ensure that the tank and piping systems, and the monitoring methods used are sufficiently described and are appropriate for the system. If the forms are incorrect the CUPA shall either correct the current forms, or have the facility owner resubmit new forms that are correct.

By April 10, 2009, a review of all of the CUPA's UST facility documents should be completed.

CUPA's 1st Update (7-9-08): As the CUPA is performing UST inspections over the year, each inspector is reviewing the file and completely reviewing the Facility Forms, the new Monitoring Plans and the Response

Plans. As part of the CUPA's response to Deficiencies 5 and 6, the CUPA has a facility tracking sheet that each inspector certifies they have reviewed and corrected the pertinent forms, and the Senior Staff reviews each file at that time. This is part of the process for receiving the new amended Permit to Operate (#5). The Permit Tracking Sheet is included as part of this progress report. The CUPA estimates it should be able to review every facility by the April 10, 2009 deadline.

Submitted as part of this progress report is a Memo to staff dated May 14, 2008, explaining procedural changes related to review of the Facility Forms, issuance of the amended Permit to Operate, and the approval of the Monitoring Plans. (Deficiencies 4, 5, and 6). Additionally, the CUPA is submitting the *UST Inspection Process* handout which is intended to assist inspectors with the review of forms prior to the inspection of a UST facility.

Cal/EPA's 1st Response: Please refer to SWRCB's response.

- **SWRCB's response:** The CUPA has instituted a procedure that ensures that the submittals received from the UST facility are reviewed and certified by the CUPA inspector as complete and accurate. This process includes approval of the monitoring plans. The Inspector completes a facility tracking sheet certifying that the file submittals have been reviewed and corrected. The CUPA states that all facility submittals will be reviewed by the April 30, 2009 deadline.

The SWRCB evaluator is satisfied with the progress the CUPA has made correcting this deficiency.

Please indicate the number of facilities that are completed vs. the number that remain to be completed in the next update.

CUPA's 2nd Update: Enter update here

5. **Deficiency:** The Permit to Operate does not contain all of the required elements. The monitoring methods for the tank and piping systems are not indicated on the permit. In addition, the permit does not state that the monitoring plan is to be retained onsite, but rather the monitoring records.

Preliminary Corrective Actions: The CUPA shall revise the permit to operate to include monitoring methods for the tank and piping systems, or attach a copy of the approved monitoring plan using the new Form D, as part of the permit. Include on the permit/conditions that the "approved" monitoring plan is to be retained onsite. This new permit version shall be placed into use by September 1, 2008.

By June 30, 2009, the CUPA will ensure that all facilities will utilize the new permit.

Along with the CUPA's second progress report (six months), submit an action plan to Cal/EPA that details the process by which the CUPA will issue the permit to operate that includes all the required elements.

CUPA's 1st Update (7-9-08): A copy of the new UST Permit is included with this progress report as an attachment. SWRCB staff Marcelle Christofferson approved the language on the permit. The CUPA has switched to using the SWRCB's *Monitoring Plan* and *Response Plan* paperwork. The approved *Monitoring Plans* are attached to the permit as a condition of the permit.

As the CUPA inspects each UST facility over the year it is issuing the new paperwork as a condition of the permit. Thus far the CUPA has not issued any amended permits but it has inspected approximately 33 facilities and has been working with each to correctly fill out the forms. Once the new Monitoring Plans/Response Plans are approved the amended permits will be issued. The CUPA estimates it should be able to issue the amended permits to each UST facility by the June 30, 2009, deadline.

Cal/EPA's 1st Response: Please refer to SWRCB's response.

- **SWRCB's response:** The CUPA has revised the UST Permit to Operate to state that the monitoring, response, and plot plans must be onsite with the permit. In addition, rather than place the monitoring alternative used at the facility on the permit itself, the CUPA has stated that the approved monitoring plan (Form D) will be attached to the permit as a condition of the permit.

The SWRCB evaluator is satisfied with the progress the CUPA has made correcting this deficiency. Please indicate the number of facilities that are completed vs. the number that remain to be completed in the next update.

CUPA's 2nd Update: Enter update here

6. **Deficiency:** The monitoring plans reviewed had some missing elements and did not describe the monitoring activities of the tanks and piping. These plans are required to detail how the tanks and piping are to be monitored. The CUPA is required to approve such plans.

Preliminary Corrective Actions: The CUPA shall ensure that the monitoring plans are submitted with the required elements, and have a

sufficient level of detail to fully describe the monitoring of the tank and piping system. The CUPA shall develop review criteria and procedures for approving monitoring (and response/plot) plans.

By July 15, 2008, submit to Cal/EPA a written procedure for reviewing and approving monitoring and response/plot plans.

CUPA's 1st Update (7-9-08): Stanislaus County CUPA has revised the Monitoring Plan (MP) forms used, and has begun to use the SWRCB recommended Monitoring Plans and Response Plans (RP). Over the course of the year, the CUPA will ensure that every UST facility fill out the new Monitoring and Response Plan paperwork for review and approval. Each MP/RP submitted will be reviewed and signed off by an inspector, as well as reviewed by Senior staff in an attempt to ensure all information is accurate. A copy of the UST Amended Permit Tracking sheet is included, as part of this progress report, and each facility will have one as part of their file.

Additionally, since the MP has become a condition of the permit, any changes to it should result in additional permit review and new permit issuance. The CUPA is currently having monthly meetings with staff on the subject of the UST program and issues related to deficiencies noted in the CUPA audit. The CUPA is submitting the Monitoring Plan Approval Process handout as part of this progress report.

Cal/EPA's 1st Response: Please refer to SWRCB's response.

- **SWRCB's response:** The CUPA has instituted a plan that requires all facilities to complete new monitoring plans (Form D) and submit them for review and approval. The CUPA is using a Monitoring Plan Approval Process handout as a basis for determining monitoring compliance. The Monitoring Plan (Form D) will be approved and attached as part of the Permit to Operate.

The SWRCB evaluator is satisfied with the progress the CUPA has made correcting this deficiency, however, the "Monitoring Plan Approval Process" should be more detailed.

For example, in the "Pre-Inspection" phase, the reviewer could make a determination that the monitoring program submitted is acceptable for the tank system described in the Form B's. If there is more than one type of construction/tank system type, additional monitoring plans are necessary for each system that uses a different monitoring method. A simple checklist approach for the pre-inspection may be a method to insure that all requirements are submitted, reviewed, have the appropriate level detail and are in

compliance. In addition, the CUPA has an approval process signoff sheet (Amended Permit Tracking Sheet), but does not mention this in the process.

CUPA's 2nd Update: Enter update here

7. **Deficiency:** The Red Tag enforcement option is not a part of the CUPA's Inspection and Enforcement plan even though Red Tag is used on UST facilities by the CUPA for formal enforcement.

Preliminary Corrective Actions: By July 10, 2008, the CUPA should add the Red Tag option to its Inspection and Enforcement plan. The plan should clearly identify how and when the Red Tag option should be used.

Ensure that all UST enforcement options are included into the Inspection and Enforcement plan.

CUPA's 1st Update (7-9-08): CUPA is currently revising the *Inspection and Enforcement Plan* to adequately address Deficiencies 7 and 8 in the CUPA Evaluation. The CUPA requests that the Red Tag addition to the Inspection and Enforcement Plan be completed by August 1, 2008, the same timeline set for Deficiency #8.

Cal/EPA's 1st Response: The CUPA's request for an extension of the deficiency correction due date has been granted. **The new corrective action due date is August 1, 2008.** Please refer to SWRCB's response.

- **SWRCB's response:** The CUPA has not completed the update of the Inspection and Enforcement plan to include "Red Tag" provisions, and has requested an August 1, 2008 timeline for completion. The SWRCB evaluator accepts the change in the timeline for correction of this deficiency.

Here are some suggestions for the "III. Official Notice" section of the CUPA's UST Inspection Process to help avoid some possible confusion:

1. On the Official Notice, the CUPA may want to specify which violations warrant Red Tags in addition to their violation classifications (Class I, Class II, or Minor). The significant violation designations are used when issuing "Red Tags" and should not be confused with Class I, II, or Minor violations, although these classifications can be used to demonstrate significant violations. For instance, if a Class I violation is found, the inspector can determine that it meets the definition of "significant violation" for purposes of Red Tag, and then list it on the Official Notice as a

Class I violation requiring a Red Tag. Not all Class I or Class II violations require a Red Tag.

2. The process states that the inspector will determine if the facility is in compliance with “leak detection” and “leak prevention”, but does not elaborate on how this will be documented and tracked. Since the compliance of these items is part of the significant operational compliance reporting, the inspector could simply show which category of compliance the facility is in according to the four categories (a, b, c, or d) of Report 6 by placing the category letter on the inspection report. This data can be entered into the CUPA's tracking database for easy retrieval.

Make sure that this process is reflected in the CUPA's inspection and enforcement plan.

CUPA's 2nd Update: Enter update here

8. **Deficiency:** The CUPA has not amended its Inspection and Enforcement Plan to include a discussion of how the CUPA will expend 5% of its hazardous waste related resources to the oversight of Universal Waste handlers and silver-only generators.

Preliminary Corrective Actions: By August 1, 2008, the CUPA's Inspection and Enforcement Plan to incorporate a discussion of how the CUPA will expend 5% of its hazardous waste related resources to the oversight of Universal Waste handlers and silver-only generators.

CUPA's 1st Update (7-9-08): CUPA is currently revising the *Inspection and Enforcement Plan* to adequately address Deficiencies 7 and 8 in the CUPA Evaluation. This revision should be complete by the August 1, 2008 deadline and will be included as part of the CUPA second progress report.

Cal/EPA's 1st Response: Please refer to DTSC's response.

- **DTSC's response:** Please keep DTSC informed of your progress in making the necessary revisions.

CUPA's 2nd Update: Enter update here

9. **Deficiency:** The CUPA did not conduct a complete oversight inspection on 03/12/08. During the inspection, the following was noted:
- Inspector failed to determine whether the owner was required to keep a written tank assessment on file certified by a qualified

engineer registered in California as required by CCR, Title 22, Section 66265.192.

Preliminary Corrective Actions: By August 1, 2008, the CUPA will determine whether or not the facility had obtained a hazardous waste tank assessment (including secondary containment) from an independent, registered qualified engineer for the hazardous waste tank located on site. If it is determined that the facility had failed to obtain the tank assessment, the CUPA will initiate formal enforcement.

CUPA's 1st Update (7-9-08): The CUPA has determined that the tank in question is a 550 gallon waste oil only tank. The tank was installed in the mid-1980's and has never been modified. The tank is set on concrete with secondary containment walls approximately 4 feet high. An engineer's certification has been submitted stating containment will hold approximately 136% of maximum tank capacity. Facility staff has written protocols for leak detection and uses a Daily Visual Check logbook for leak detection requirements.

According to the Cal CUPA Forum *Guidance for Hazardous Waste Tanks* certain waste oil and antifreeze only tanks can be exempted from the written tank assessment requirements if certain criteria is met. Based on the information provided above, all that would be required is sign off of the tank by the Fire Marshall.

Senior staff has contacted DTSC several times to determine if the facility tank in question may potentially qualify as an "existing tank" and be exempted from the Tank Assessment requirements. To date no one from DTSC has provided an answer related to the specifics of the tank. The CUPA is requesting assistance from DTSC in determining what the exemption status requirements are for existing waste oil and antifreeze only tanks at a large generator facility, or if the tank cannot be exempted and must have a written tank assessment.

Additionally, if it is determined that a written tank assessment is required the CUPA will set a due date for the facility to submit the requested document. The CUPA will initiate formal enforcement if the document is not submitted within the timeframe granted.

Cal/EPA's 1st Response: Cal/EPA and DTSC considers this deficiency corrected. Please refer to DTSC's response.

- **DTSC's response:** DTSC agrees with the CUPA. A tank assessment is not required for an unmodified existing tank (installed in the mid 80's with secondary containment) with full

secondary containment (per T22, section 66265.191) for non-RCRA waste. No further action is required.

10. Deficiency: The CUPA is not conducting inspections in a manner consistent with state law or regulation. A review of the CUPA's files shows that at least in one instance a tiered permitted facility had not been inspected every three years by the county. Indalex, Inc was inspected on December 29, 2003 by the county, January 11, 2005 by DTSC, and later on March 19, 2008 by the county.

Preliminary Corrective Actions: The CUPA will ensure that all Tiered Permitted Facilities are inspected within a 3 year cycle in contrast to other generators under the 5 year cycle adopted by the county.

By September 30, 2008, please send in the FY 07/08 Report 3 reflecting that all such facilities have been inspected.

CUPA's 1st Update (7-9-08): The CUPA has inspected all of its Tiered Permitting facilities within the three-year mandate with the exception of Modesto Plating at 436 Mitchell, Modesto, Ca. This facility was inspected by DTSC in an unannounced inspection that did not include notification to the CUPA. An enforcement proceeding is ongoing as a result of the DTSC inspection. DTSC should determine if the CUPA is required to perform an inspection in light of these circumstances.

The Report 3 and 4 will be submitted to Cal EPA by the September 30, 2008 deadline.

Cal/EPA's 1st Response: Cal/EPA and DTSC considers this deficiency corrected. Please refer to DTSC's response.

- **DTSC's response:** DTSC should have notified the CUPA about its inspection. Please inspect the facility during the next triennial cycle.

11. Deficiency: The CUPA is unable to document in certain instances that some facilities that have received a notice to comply citing minor violations have not returned to compliance (RTC) within 30 days of notification. Either the business must submit a RTC Certification in order to document its compliance or in the absence of certification the CUPA must re-inspect the business to confirm that compliance has been achieved.

Preliminary Corrective Actions: The CUPA shall ensure that all facilities with minor violations RTC by documenting this in the file by either a re-inspection report or a RTC certificate.

By July 10, 2008, please submit to Cal/EPA a RTC certification or a re-inspection report from 2 facilities that have been cited for minor violations.

CUPA's 1st Update (7-9-08): The CUPA has amended its database to capture Return to Compliance (RTC) dates and documentation. Additionally, the CUPA is submitting the RTC reports for both facility inspections noted in the CUPA Evaluation.

Cal/EPA's 1st Response: Cal/EPA and DTSC considers this deficiency corrected. Please refer to DTSC's response.

- **DTSC's response:** The deficiency has been corrected. Thank you for your efforts.